

MSSA

Master Software and Services Agreement

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Definitions and Interpretation

Any reference to a “day” or “days” refers to calendar days.

Any reference to “business days” refers to any day which is not a weekend or public or bank holiday in any part of the United Kingdom.

Unless the context otherwise requires, each reference in this MSSA to:

“writing”, and any cognate expression, includes a reference to any communication effected by electronic transmission or similar means;

a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

“Appendix” is an appendix to this MSSA; and

“Clause” is a reference to a Clause in this MSSA.

The words include, includes, including and included and like words and expressions will be construed without limitation unless inconsistent with the context.

The headings used in this MSSA are for convenience only and shall have no effect upon the interpretation of this MSSA. Words imparting the singular number shall include the plural and vice versa and references to any gender shall include the other gender and to persons shall include corporations.

“Affiliates”	means a legal entity that directly or indirectly is controlled by, controls, or is under common control with a Party, provided that “control” shall mean ownership as to more than 50% of another legal entity or the power to direct decisions of another legal entity, including the power to direct management and policies of another legal entity, whether by reason of ownership, by contract or otherwise;
“Agreement”	means a contract between the Company and the Client comprising of this MSSA (including any Appendix thereof), and an Order Form, all as amended from time to time;
“Beta Service”	means beta, pre-release and evaluation versions of Software and/or Services;
“Client”	means the contracting entity specified on the Order Form purchasing the Products and/or Services;
“Client Data”	means electronic data and information submitted by or for the Client in relation to the Client’s use of the Software and/or Services;
“Commencement Date”	means the effective date specified on the Order Form or the date of the applicable renewal, or in the absence of a date, the date of last signature of the Parties on the Order Form;
“Company” or “Ideagen”	means the contracting entity supplying the Products or performing the Services as specified on the Order Form;
“Confidential Information”	has the meaning given to it in Clause 15;
“Documentation”	means the Company’s product specification which is issued by the Company or its Affiliates, relating to the Products;
“Fees”	means the charges payable under an Agreement;

"Hardware"	means computer hardware, or associated equipment that may be supplied by the Company as specified on the Order Form;
"Hosted" or "Hosting"	means a service where Software is deployed on hosted infrastructure and is managed by the Company or on its behalf by its agents, and as specified on the Order Form;
"Intellectual Property Rights"	means any and all patents, rights in inventions, rights in designs, trademarks, trade and business names and all associated goodwill, rights to sue for passing-off or for unfair competition, copyright, moral rights and related rights, rights in databases, typography rights, domain names, rights in information (including know-how and trade secrets) and all other similar or equivalent rights (subsisting now or in the future) in any part of the world, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights for their full term;
"MSSA"	means this Master Software and Services Agreement (including any Appendix thereof);
"On-Premise"	means that the Software and associated data are installed and managed on infrastructure at the premises of the Client (or other such location operated or specified by the Client) and managed by the Client or its agents;
"Order Form"	means a document accepted by the Parties that details the Products and/or Services that the Company agrees to provide in accordance with this MSSA;
"Parties" or "Party"	means singly or collectively the Company and the Client as the context so requires;
"Products"	means Software and/or Hardware (and as the context shall require);
"Project Management Package"	means any project management package provided by the Company as specified on the Order Form;
"Project Management Package Term"	means the period specified on the Order Form;
"SaaS" or "Software as a Service"	means the applicable online software service which makes the Software available to Users using a web-browser;
"Services"	means all services performed by the Company under the Agreement (excluding Products);
"Software"	means software products that are ordered by the Client and made available to the Client on an On-Premise, Hosted or SaaS basis by the Company as specified on the Order Form, including any new releases, updates, upgrades, error corrections in respect of the same (where made available by the Company) and any interfaces or associated offline components of the same (as described in the Documentation (and being part of the software products) and where applicable any Order Form);
"Support and Maintenance Services"	means support and maintenance services provided by the Company as described in Clause 22 of this MSSA and Appendix A of this MSSA (and where specified on the Order Form as being applicable). If there are any consultancy days provided as a part of services, these will be specified on the Order Form;
"Success Package"	means any success package provided by the Company as specified on the Order Form;

“Success Package Services Term”	means subject to earlier termination of an Agreement in accordance with its terms, a period of 2 years, or such other period specified on the Order Form, whichever is sooner;
“Term”	means the contract term as described in Clause 6;
“Trade Sanctions”	means any trade, economic or financial sanctions, restrictions on trade, trade or transit controls, restrictions on terrorist organisations imposed, administered or enforced by any local authority as updated, replaced or amended from time to time;
“User”	means an individual who is authorised by the Client to use the Software in accordance with the terms of the Agreement, to whom the Client has supplied a user identification and password; and
“Work Product”	means the work, programs, applications, interfaces, software, and other technical information created by the Company in the course of performing the Services on behalf of the Client.

1. Formation of the Agreement

- 1.1. This is a legally binding agreement between the Company and the Client. This MSSA will come into force upon the earlier of (i) the Commencement Date on an executed Order Form, (ii) upon initial delivery of the Products and/or Services to the Client, (iii) the Client’s use of the Products and/or Services, or (iv) the date of last signature of this MSSA. Each Order Form agreed by the Parties forms a separate agreement between the Parties, incorporating any terms set out in that Order Form and the terms set out in this MSSA. For the avoidance of doubt, any provisions set out in an Order Form shall only affect that Agreement and not any other Agreement that may later, or before it, be entered into between the Parties.
- 1.2. Neither Party agrees to any proposed amendment, alteration, or addition to this MSSA or any Agreement unless mutually agreed to in writing. Any other statement whether verbally or in writing shall not alter, add to, or otherwise affect this MSSA or any Agreement.
- 1.3. The Company is not bound by and hereby expressly rejects the Client’s general terms and conditions of purchase and any additional or different terms or provisions that may appear on any order, or the like used by the Client. Course of performance, course of dealing, and usage of trade shall not be applied to modify any Agreement between the Parties.
- 1.4. In the event of any conflict or inconsistency between the terms of this MSSA and the relevant Order Form, the terms of the Order Form shall prevail, except for Clauses 12, 13, 14 and 18, where the terms of this MSSA prevail.
- 1.5. In the event of any conflict or inconsistency between the terms of this MSSA and Appendix A, the terms of this MSSA shall prevail.

2. Ownership and Intellectual Property Rights

- 2.1. As between the Company and the Client, all Intellectual Property Rights in the Software, Services and Work Product, remain the property of the Company and its third-party licensors (as applicable). The Client acquires no title or interest in the Software, Services and/or Work Product other than the right to use the same as detailed in this MSSA or as expressly stated in an Agreement. Although the Client has rights to use the Software, Services and/or Work Product as described, the Company does not transfer ownership of any Intellectual Property Rights in the Software, Services and/or Work Product to the Client. Cli

3. Software Licence

- 3.1. The Software, including any third-party software embedded in the Software, is not open-source, freeware, or shareware. The Company and its Affiliates reserve all rights not expressly granted to the Client under an Agreement.
- 3.2. Where the Order Form states that the Software is provided or delivered on a:
 - 3.2.1. SaaS basis, the Company hereby grants the Client (and, where applicable the Client's Affiliates) a non-exclusive, non-transferable, revocable right and licence to access and use the Software and/or Work Product in accordance with the terms of the Agreement, and only for the Client's (and, where applicable the Client's Affiliates) internal business operations during the Term and in accordance with the terms of the Agreement, and any restrictions stated therein; or
 - 3.2.2. Hosted basis, the Company hereby grants the Client (and, where applicable the Client's Affiliates) a non-exclusive, non-transferable, revocable right and licence to access and use the Software and/or Work Product in accordance with the terms of the Agreement, and only for the Client's (and, where applicable the Client's Affiliates) internal business operations during the Term and in accordance with the terms of the Agreement, and any restrictions stated therein.
- 3.3. The grant of the right and licence set out in Clause 3.2 and Clause 3.4 is always subject to the Client's compliance with the terms of the Agreement including, without limitation, in accordance with any volume and usage restrictions (including named or concurrent User restrictions) stated on the Order Form.
- 3.4. Where the Order Form states that the Software is provided in an object code format, on a perpetual, and otherwise On-Premise basis:
 - 3.4.1. the Company hereby grants the Client (and, where applicable the Client's Affiliates) a non-exclusive, non-transferable, royalty-free, fully paid-up, perpetual licence to access and use the Software and/or Work Product only for the Client's (and, where applicable the Client's Affiliates) internal business operations and in accordance with the terms of the Agreement and any restrictions stated therein;
 - 3.4.2. where expressly stated on the Order Form, the Client shall be permitted to enable and make available to third parties any web user interface forming part of the Software, but solely for the Client's (and, where applicable the Client's Affiliates) internal business purposes only. For the avoidance of doubt, such use shall at all times remain subject to the terms of the Agreement (including, without limitation, that such use must not constitute the provision by the Client of a bureau service).
- 3.5. The Client acknowledges that use of any third-party software embedded in the Software is subject to any additional third-party licencing terms and conditions that may be notified to the Client from time to time and made available in user help files of the Software, and the Client agrees to comply with such terms as notified.

4. Terms of Use

- 4.1. Where the Software is provided in object code format, for On-Premise use on a perpetual basis, unless otherwise permitted by law, the Client may make a maximum of 1 copy of the Software for back-up and/or disaster recovery purposes.
- 4.2. Subject to Clause 4.1, and except as otherwise expressed by the terms of the Agreement (and whether the basis of the licence is On-Premise, Hosted or SaaS), the Client agrees and acknowledges that it shall not and shall ensure its Users shall not:
 - 4.2.1. reproduce, copy (except as permitted by law), distribute (on a website, ftp server or otherwise), redistribute, store, sell, rent, lease, make available as a bureau service, sub-license, assign, transfer, disclose, create derivative works of, or in any other way re-use the Software and/or Work Product without the prior written consent of the Company;

- 4.2.2. make adaptations or variations to the Software and/or Work Product without the prior written consent of the Company;
 - 4.2.3. disassemble, decompile or otherwise reverse-engineer the Software and/or Work Product;
 - 4.2.4. alter, remove, obscure, conceal or otherwise interfere with any markings on or within the Software and/or Work Product (including the packaging and any other physical embodiment of the Software and/or Work Product) which refers to the Company and its third-party licensors (as applicable) and must not interfere with, or fail to reproduce, any other copyright notices of the Company and its third-party licensors (as applicable) as they appear in or on the Software and/or Work Product and any and all copies thereof;
 - 4.2.5. use the Software and/or Work Product for any purpose that is illegal, fraudulent, harmful or otherwise contrary to any law or regulation or any regulatory code or any written instruction or guideline from the Company (including, without limitation the Agreement);
 - 4.2.6. misuse the Software and/or Work Product by knowingly introducing trojans, viruses, worms, logic bombs or other material which is malicious or technologically harmful or attack the Software and/or Work Product via spamming, flooding, a denial-of-service attack or a distributed denial of service attack;
 - 4.2.7. permit or facilitate the use of the Software and/or Work Product in any manner that causes, or may cause, damage to the Software or impairment of the availability or accessibility of the Software and/or Work Product or which would otherwise constitute a breach of the Agreement;
 - 4.2.8. tamper with, or attempt to gain unauthorised access to, the Software and/or Work Product or any server, computer or database connected to the Software and/or Work Product or probe, scan or test the vulnerability of the Software and/or Work Product; and/or
 - 4.2.9. attempt to obtain, or assist third parties in obtaining, access to the Software and/or Work Product, other than as provided in the Agreement.
- 4.3. The Client shall (i) be responsible for its Users compliance with the terms of the Agreement, (ii) prevent unauthorised access to or use of Software and/or Work Product, and (iii) promptly report to the Company on becoming aware of any actual or suspected unauthorised access or use.
 - 4.4. The Client hereby grants the Company and its Affiliates a fully paid-up, non-exclusive, royalty-free, non-transferable licence to use any Client Data or other materials provided by the Client to the Company and/or its Affiliates (or on their behalf) during the Term for the sole purpose of providing the Products and/or Services to the Client.

5. APIs

- 5.1. Where the Client makes use of the Company's application programming interfaces in the Software ("APIs"), the Client agrees that (except in respect of the Software), it is solely responsible for any integrations, programs, applications, interfaces, code, data, content, or resources that it creates, transmits or displays through, or using, the Company's APIs.

6. Term and Termination

- 6.1. Unless otherwise stated on the Order Form, the Agreement shall continue in effect for an initial period of 24 months (the "Initial Period"). Thereafter it shall automatically renew for successive periods of 24 months (each a "Renewal Period"), unless either Party gives written notice to the other of its intent to terminate at least 90 days prior to the end of the Initial Period or the applicable Renewal Period. It is a term of the Agreement that the Client must notify the Company of any termination by sending a notice to cancellations@ideagen.com. The Client accepts that the Company is unable to accept any other form of termination communication and that any other form of communication is not a valid notice giving rise to termination. The Company's then current terms available at

<https://www.ideagen.com/legal-terms> shall apply to any Renewal Period and the terms of this MSSA shall be deemed to be replaced by the said terms.

- 6.2. Termination or expiration of the Agreement shall not terminate a perpetual licence granted under the Agreement unless the Company terminates or is permitted to terminate the Agreement pursuant to Clause 6.5.
- 6.3. The Client may terminate the Agreement by written notice where the Company commits an irremediable material breach of the Agreement or commits any remediable material breach and fails to remedy it within 30 days of receipt of notice of the breach requiring remedy of the same (a "Company Material Breach"). A Company Material Breach of an Agreement shall not affect any other Agreement that may be formed between the Parties.
- 6.4. The Client may terminate any or all Agreements by written notice where the Company makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of any distraint, execution, event of insolvency or event of bankruptcy or any other similar process or event, whether in the United Kingdom or elsewhere.
- 6.5. The Company may terminate any or all Agreements by written notice and/or suspend Software and/or Services, with immediate effect:
 - 6.5.1. where the Client fails to pay any amount due to the Company as it falls due (under any Agreement);
 - 6.5.2. if the Company becomes aware or considers that the Client has become subject to Trade Sanctions, or that the Products and/or Services are being provided, whether directly or indirectly, to a country or person which is subject to Trade Sanctions;
 - 6.5.3. where the Client commits an irremediable material breach of any Agreement or commits any remediable material breach and fails to remedy it within 30 days of receipt of notice of the breach requiring remedy of the same (a "Client Material Breach"). A Client Material Breach by the Client shall include a breach of any of its obligations under Clauses 14, 15, 16 or 18; or
 - 6.5.4. where the Client makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of any distraint, execution, event of insolvency or event of bankruptcy or any other similar process or event, whether in the United Kingdom or elsewhere.
- 6.6. In the event the Client is in Client Material Breach, the Company at its discretion may suspend the delivery of all or any part of the Products and/or Services to the Client (or terminate the Agreement for a Client Material Breach). For the avoidance of doubt, if the Client commits a Client Material Breach, the Company shall be entitled to suspend or terminate any other agreement, arrangement and/or provision of the services with the Client or its Affiliates, including any Agreement.
- 6.7. Where Software is provided On-Premise, within 30 days of expiration or termination of the Agreement or at the end of any non-perpetual licence term, the Client shall uninstall the Software and delete (beyond recovery by reasonable means) any copies to the Company and provide a certificate signed by the Client's duly authorised representative to confirm compliance with this Clause.
- 6.8. Termination or expiration of the Agreement (howsoever occasioned) is without prejudice to any accrued rights or remedies available to the Parties, nor shall it affect the enforceability of any Clause, provision, paragraph or section of the Agreement which is expressly or by implication intended to come into or continue into force on or after such termination.
- 6.9. Where the Software is provided on a SaaS or Hosted basis, upon request, the Company shall provide the Client with access to the relevant Software for 30 days after the effective date of termination or expiration of the Agreement for the Client to export or download any Client Data. After that 30 day period, the Company will have no obligation to maintain such Client Data and may delete or destroy all copies in the Company's systems or otherwise in the Company's possession or control provided in

the Agreement, unless legally prohibited. In the event the Client is unable to export or download its Client Data in accordance with this Clause and requires the Company's assistance, the Client agrees to cover any expenses incurred by the Company.

7. Deliverables

7.1. Proprietary Software:

7.1.1. During the Term, the Company shall provide the Client with Software, as detailed on the associated Order Form under the following terms:

7.1.1.1. Where the Software is provided:

7.1.1.1.1. as SaaS, the Company will provide secure access to the latest supported version of its applications; and

7.1.1.1.2. as SaaS or where the same is delivered on a Hosted basis, the Client understands and agrees that there may be instances where the Company is required to interrupt the Software without notice in order to protect the integrity of the Software due to security issues, virus attacks, spam issues or other unforeseen circumstances. The Company agrees to make commercially reasonable efforts to minimise instances of interruptions to the Software without notice.

7.1.1.2. Where the Software provided is On-Premise:

7.1.1.2.1. Software must be installed by the Client in accordance with the volume, usage and type of licences detailed on the Order Form. Installations are only permitted on systems under the full control of the Client;

7.1.1.2.2. in some cases, Software must be activated with a licence file. Throughout the Term, the Company will issue the licence in accordance with the Agreement;

7.1.1.2.3. the Client agrees to run Software on hardware with specifications that meet or exceed the system's recommendations and third-party compatibility information set forth in the Company's minimum system requirements as notified from time to time; and

7.1.1.2.4. if upgrades are made available in relation to the Client's version of the Software, these will be available to the Client via the appropriate distribution method. While there is no obligation to make upgrades available, the Company will only make these available to Clients who have a valid agreement and have purchased maintenance where required.

7.2. Non-Proprietary Products:

7.2.1. Where any Products are provided to the Company by a third-party (and resold by the Company) and supplied to the Client:

7.2.1.1. the Company shall specify such Products within the relevant Order Form and the Client acknowledges and agrees that the specifications or functionality of such Products may be subject to change; and

7.2.1.2. the Client agrees to comply with all applicable third-party terms which are specified or referred to in the Order Form (and agrees to comply with the terms set out therein, as if the Client were identified as a party to the same) and further agrees that it shall not by its acts or omissions cause a breach of the same.

8. Product and Service Use Restrictions

- 8.1. Except where specified on the Order Form, use of the Products and/or Services is restricted to use by the Client, and its Affiliates only.
- 8.2. The Client will not use the Product and/or Service to take any actions that:
 - 8.2.1. infringe any third-party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy;
 - 8.2.2. violate any applicable law, statute, ordinance or regulation (including those regarding export control);
 - 8.2.3. are defamatory, libellous, threatening, harassing or obscene;
 - 8.2.4. constitute unauthorised entry to any machine accessible via the network; or
 - 8.2.5. perform penetration testing of any type including PCI-DSS testing without the written authority of the Company and regardless the Client shall be liable for any and all damage to the software or data arising from such testing. Where the Company carries out any penetration testing which is relevant to the Products and/or Services used by the Client, upon request, the Company may provide copies (subject to redaction) of applicable penetration test reports. For the avoidance of doubt, this Clause 8.2.5 is only applicable to SaaS and Hosted Products. If the Software is On-Premise, the Client can carry out penetration testing on its own servers without the Company's written consent.
- 8.3. SaaS, term or perpetual licences can be increased at any point during the Initial Period or applicable Renewal Period of the Agreement. SaaS or term licences can only be reduced at least 90 days prior to the end of the Initial Period or the applicable Renewal Period and unless otherwise agreed in writing, can't be reduced by more than 50% of the present contract value. For the avoidance of doubt, any SaaS or term licence reductions shall only take effect at the start of the next Renewal Period. Perpetual licences cannot be reduced once purchased.

9. Free trials

- 9.1. If the Company provides a free trial, this will be available to the Client until the earlier of:
 - 9.1.1. the end of the free trial period for which the Client registered to use the applicable Software;
 - 9.1.2. the start date of any purchased Software by the Client; or
 - 9.1.3. termination by the Company in its sole discretion as notified to the Client in writing by the Company.
- 9.2. Any Client Data uploaded to the Software by the Client, and any customisations made during the Client's free trial will be permanently deleted upon termination of the free trial period unless the Client purchases the same Software. The Company shall have no liability for any harm or damage arising out of or in connection with a free trial.

10. Beta Services

- 10.1. From time to time, the Company may make Beta Services available to the Client at no charge. The Client may choose to try such Beta Services or not in its sole discretion. Beta Services are intended for evaluation purposes and not for production use and are not supported. All restrictions, the Company's reservation of rights and the Client's obligations concerning the Services, and use and content, shall apply equally to the Client's use of Beta Services. The Company may discontinue Beta Services at any time in its sole discretion and may never make them generally available. The Company shall have no liability for any harm or damage arising out of or in connection with a Beta Service.

11. Software and Service Usage Limits

- 11.1. Where applicable, Software and/or Services may be subject to any volume and/or other usage limits if such limits are specified on the applicable Order Form or otherwise agreed by the Parties. Unless otherwise specified:
- 11.1.1. where a quantity on an Order Form refers to named or a number of Users, the Software may not be accessed by more than that number of Users;
 - 11.1.2. where a quantity on an Order Form refers to a number of concurrent Users, the Software may not be accessed by more than that number of Users at any point in time;
 - 11.1.3. a User's password may not be shared with any other individual; and
 - 11.1.4. except as set forth in an Order Form, a User identification may only be reassigned to a new individual replacing one who will no longer use the Software.
- 11.2. Where Software includes the uploading, and downloading of data, limits may apply to the amount of data transferred in any given time period. Unless otherwise specified on the applicable Order Form, there shall be a limit of 20GB per month for outbound data and 50GB for data storage.
- 11.3. The Company shall have the right to audit the Client to ensure compliance with any usage limits. Pursuant to Clauses 11.1 and 11.2, if the Client exceeds a contractual usage limit, the Client will be required to execute an Order Form for additional quantities of the applicable Software and/or Services, promptly upon the Company's request, charged at the Company's then current standard rates. Should the Client not execute an Order Form, the Company reserves the right to invoice the Client for excess usage.

12. Limitation of Liability

- 12.1. The express terms set out in the Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.
- 12.2. Save as provided by Clause 12.3 below, in respect of each Agreement:
- 12.2.1. subject to the terms of Clause 12.2.2, neither Party's total aggregate liability in respect of all causes of action arising out of or in connection with breach, alleged breach or other claim in respect of Clause 15 (confidentiality) or Clause 16 (data protection) whether for breach of contract, strict liability, tort (including negligence), misrepresentation or otherwise, shall exceed 2 times the total Fees paid or payable under the Agreement;
 - 12.2.2. neither Party's total aggregate liability in respect of all other causes of action otherwise arising out of or in connection with an Agreement (and therefore except as defined under Clause 12.2.1) whether for breach of contract, strict liability, tort (including negligence), misrepresentation or otherwise, shall exceed the total Fees paid or payable under the Agreement;
 - 12.2.3. neither Party shall be liable for any claim arising out of or in connection with an Agreement to the extent that it relates to loss of profits, goodwill, business opportunity or anticipated savings, loss of data, injury to reputation, wasted management time or indirect, consequential or special loss or damage regardless of the form of action (whether for breach of contract, strict liability, tort (including negligence), misrepresentation or otherwise) and regardless of whether that party knew or had reason to know of the possibility of the loss or damage in question; and
 - 12.2.4. neither Party shall be liable for any delay in or failure to comply with its obligations to the extent that such failure results from the actions or omissions of the other.
- 12.3. Nothing in an Agreement shall limit or exclude either Party's liability:

- 12.3.1. to pay the Fees;
- 12.3.2. for either Party's defence and indemnity obligations set forth in Clause 13;
- 12.3.3. for death or personal injury caused by its negligence;
- 12.3.4. for fraud or fraudulent misrepresentation;
- 12.3.5. for breach of the obligations arising from section 12 of the Sale of Goods Act 1979 and/or section 2 of the Sale of Goods and Services Act 1982; and/or
- 12.3.6. for any other loss or damage the exclusion or limitation of which is prohibited by law.

13. Indemnities

13.1. By the Client:

- 13.1.1. The Client shall indemnify and defend the Company against any third-party claims (i) resulting from the unauthorised use, that has been permitted by the Client, of the Company's Software or the Services (but excluding any software supplied by third parties) or (ii) that any of Client's content provided and included on the hosting site including Client Data infringes or violates any rights of third parties, including without limitation, rights of publicity, rights of privacy, Intellectual Property Rights, trade secrets or licences. The Client will indemnify the Company from any damages, losses and costs finally awarded, including reasonable legal fees.

13.2. By the Company:

- 13.2.1. The Company shall indemnify and defend Client against any third-party claims alleging that the Company's Software infringes the patent, trademark or copyright of third parties, for any damages, losses, and costs finally awarded, including reasonable legal fees. The Company shall not be obligated to indemnify Client to the extent the alleged infringement arose from Client's use of the Software not in accordance with the Agreement or applicable Documentation, Client's unauthorised modification of the Software, and/or Client's unauthorised combination of the Software with other products and services not provided by the Company. If any infringement occurs, or, in the Company's opinion may occur, and as mentioned, or if Client is prohibited by a court order from using the Software, then, subject to the Client complying with Clause 13.3, the Company shall at its own expense and as soon as reasonably possible (i) procure for Client the right to continue using the Software or any part thereof, (ii) replace the Software with a functionally equivalent non-infringing product, or (iii) modify the same so as to make it non-infringing while remaining functionally equivalent. If the Company is unable to perform any of the options described in (i), (ii) or (iii) above, the Client shall return the allegedly infringing item, and the Company's sole liability (in addition to any third-party claims under this Clause) shall be to refund the Client the amount paid by the Client for such infringing item. This Clause 13.2.1 shall constitute the Company's sole obligation and the Client's sole and exclusive remedy with respect to any infringement or claim of infringement.

13.3. On becoming aware of a potential claim under Clause 13.1 or Clause 13.2, the Party seeking indemnification ("Indemnitee") shall:

- 13.3.1. notify the other Party ("Indemnitor") in writing of the claim for which indemnification is being sought;
- 13.3.2. make no admission without the Indemnitor's consent; and
- 13.3.3. allow the Indemnitor to conduct and/or settle all negotiations in or prior to litigation.

13.4. The terms of this Clause 13 shall survive termination of the Agreement.

14. Warranties and Representations

- 14.1. Each Party warrants that:
- 14.1.1. it has the right and power to enter into the Agreement;
 - 14.1.2. an authorised representative has executed or will execute the Agreement; and
 - 14.1.3. it will comply with any applicable laws and regulations pertaining to the Agreement and the provision or receipt of Products and/or Services thereunder.
- 14.2. The Company warrants that the Services shall be performed in a professional and workmanlike manner in accordance with recognised industry standards. If Client believes that the Services were not performed in accordance with the warranty in the preceding sentence, Client will notify the Company within 30 days after the Services were performed, and the Company, as its sole obligation and Client's sole remedy, will re-perform the Services at no additional cost.
- 14.3. The Company warrants that the Products shall conform with the Documentation in all material respects for a period of 30 days from the Commencement Date. Except as stated by this Clause 14, Products are provided "as is", and no warranty is given by the Company in relation to the Product, the uses to which they may be put or their fitness or suitability for any particular purpose. The Client warrants to the Company that the Client shall provide an environment capable of receiving the Products and/or Services.
- 14.4. The Company does not warrant that the Products are free from minor errors, however such minor errors shall not materially affect functionality or performance.
- 14.5. The Company expressly disclaims all other representations or warranties, whether express, implied or statutory (by any territory or jurisdiction) to the extent permitted by law, and further the Company expressly excludes any warranty of fitness for a particular purpose, or merchantability to the extent permitted by law.
- 14.6. The undertaking given in this Clause shall not apply to the extent the Products have been altered by any Party other than the Company without authorisation or has been operated or run on any platform or in any environment inappropriate for the Product.

15. Confidentiality

- 15.1. For the purposes of the Agreement:
- 15.1.1. "Confidential Information" means (i) any information and works in any form or format whatsoever disclosed to the Company by or on behalf of the Client for use by the Company in providing the Products and/or Services and the physical embodiment of any such information; (ii) any other information which the Company is required to generate in the course of providing Products and/or Services; (iii) the terms of the Agreement; and (iv) any and all other information in any form or format disclosed by or on behalf of one Party to the other Party under or in connection with the Agreement (or any associated other agreement) at any time (whether before, upon or following the entry into force of the Agreement), which information is marked as confidential or otherwise designated (whether orally or in writing, including in the latter case in terms of the following provisions of this definition) by the person supplying it as "confidential", or which by its nature is confidential. Confidential Information includes but is not limited to any information in relation to the Company's or the Client's past, present and potential future finances, policies, procedures, plans, products, services, staff, customers or contractors and/or those of any of the Company's or the Client's Affiliates.
 - 15.1.2. "Discloser" means, in respect of any Confidential Information, the Party by or on behalf of which that Confidential Information is disclosed, and both Parties will be treated as the "Discloser" of the terms of the Agreement; and

- 15.1.3. "Recipient" means, in respect of any Confidential Information, the Party to which that Confidential Information is disclosed under the Agreement, and both Parties will be treated as the "Recipient" of the terms of the Agreement.
- 15.2. Each Party will, in respect of any Confidential Information of which it is the Recipient:
- 15.2.1. use that Confidential Information only if and to the extent necessary for the purposes of performing its obligations and/or exercising its rights under the Agreement;
- 15.2.2. not disclose that Confidential Information to any person other than:
- 15.2.2.1. (i) any person employed or engaged by it (including any sub-contractor properly appointed by the Recipient); (ii) its auditors and other professional advisers; and (iii) where the Client is the Recipient, any of the Client's Affiliates, in each case if and to the extent that such disclosure is necessary for the purposes in Clauses 15.2.1 and 15.2.2 ("Permitted Disclosees"); and in each case shall be bound by the confidentiality obligations disclosed herein; or
- 15.2.2.2. any person having a statutory, regulatory right or other legal right (other than a contractual right) to request and receive that information, including any court of competent jurisdiction, provided that the Recipient promptly informs the Discloser (if and to the extent that the Recipient is legally permitted to so inform the Discloser) in order to allow the Discloser the opportunity to seek a protective order or otherwise limit such disclosure, and Recipient shall cooperate with Discloser to limit any such disclosure or to seek a protective order.
- 15.2.3. otherwise use all reasonable endeavours to protect and maintain the confidentiality of that Confidential Information.
- 15.3. If requested to do so by the Client, the Company will ensure that, prior to the disclosure to any Permitted Disclosee of any Confidential Information of which the Company is the Recipient, that person signs a separate confidentiality undertaking in favour of the Client in terms no less onerous than those set out in this Clause.
- 15.4. Clause 15.2 will not apply to any information which is or becomes public knowledge other than as a result of a breach of this Clause 15:
- 15.4.1. was rightfully in the Recipient's possession before its disclosure to the Recipient under or in connection with the Agreement and is not under an obligation of confidentiality in relation to that information; or
- 15.4.2. following its disclosure to the Recipient under or in connection with the Agreement, is received by the Recipient from a third-party who is not under an obligation of confidentiality in relation to that information provided that:
- 15.4.2.1. Clause 15.4 is not intended to exclude from the application of this Clause any information generated by the Company (or on the Company's behalf) for the Client under the Agreement which shall remain the Confidential Information of the Client; and
- 15.4.2.2. the burden of proof that Confidential Information falls into any of the exclusions set forth in Clauses 15.4.1 and 15.4.2 will be borne by the Party asserting the exclusion.
- 15.5. Each Party will ensure compliance by its Permitted Disclosees with the confidentiality obligations imposed on it by this Clause and shall be liable for any breach by its Permitted Disclosees hereto.
- 15.6. Each Party agrees that damages may not be an adequate remedy for any breach of this Clause and that the other Party will be entitled to seek injunctive relief, including, without limitation a court order to enforce compliance with this Clause or to stop any breach of it, actual or threatened.
- 15.7. The Recipient shall not obtain, by virtue of the Agreement, any right, title, or interest in any Confidential Information of the Discloser.

15.8. The terms of this Clause 15 shall survive termination of the Agreement for a period of 3 years.

16. Data Protection

16.1. For the purposes of this Clause 16:

16.1.1. "Data Privacy Laws" means all laws that relate to data protection, privacy, the use of information relating to individuals, and/or the information rights of individuals, including, without limitation, the Data Protection Act 2018, the UK GDPR (as defined in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018), the Privacy and Electronic Communication (EC Directive) Regulations 2003, the Regulation of Investigatory Powers Act 2000, the Telecommunications (lawful Business Practice) (Interception of Communications) Regulations 2000, Investigatory Powers Act 2016, and any applicable laws in force from time to time in any relevant jurisdiction which implements the General Data Protection Regulation ((EU) 2016/679) on the protection of individuals with regards to the processing of personal data, and in the UK, and all and any regulations made under those acts or regulations, in each case in any relevant jurisdiction(s) from time to time and the equivalent in any other relevant jurisdictions (including any relevant jurisdiction where the Services (or part thereof) are performed), all as amended or replaced from time to time;

16.1.2. "(Data) Controller", "Data Subject", "Personal Data", "Personal Data Breach", "Processing", and "(Data) Processor" have the respective meanings given under the UK GDPR (as defined in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018) or other applicable Data Privacy Laws from time to time; and

16.1.3. "Client Personal Data" means any Personal Data processed by the Company on behalf of the Client under or pursuant to the Agreement. For the avoidance of doubt, the Client shall not upload to the Software or provide to the Company any HIPAA, ITAR or children's data unless this has been agreed in writing and a Data Processing Agreement ("DPA") or Business Associate Agreement ("BAA") has been executed by the Parties.

16.2. The servers required to provide the Hosting services to the Client are managed by the Company, the applicable geographical region of the same will be detailed on the Order Form.

16.3. Both Parties shall comply with their respective obligations under the applicable Data Privacy Laws in relation to the Processing of Client Personal Data while carrying out their respective obligations under the Agreement.

16.4. The Company acknowledges and accepts that it is the Client's Processor. The Company shall only Process Client Personal Data on documented instructions from the Client. The Client hereby instructs the Company to process the Client Personal Data:

16.4.1. for the purpose of performing its obligations under the Agreement;

16.4.2. for such other purposes, as may be instructed by or agreed with the Client or as otherwise notified by the Client in writing from time to time; and

16.4.3. in accordance with the Data Privacy Laws.

16.5. The Company shall:

16.5.1. not appoint any sub-processor without the prior written consent of Client, not to be unreasonably withheld, and consent is expressly given in respect of those suppliers of the Company given in the Order Form and the Company's privacy policy. The Company shall ensure an Agreement is entered into with the relevant sub-processor which meets the requirements of Data Privacy Laws and which imposes on the sub-processor materially the same obligations in respect of Processing of Client Personal Data as are imposed on the Company under the Agreement. In particular such agreement shall provide sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the Processing will

- meet the requirement of applicable Data Privacy Laws. The Company shall remain fully liable to Client for any acts or omissions of the sub-processor;
- 16.5.2. immediately where at all possible or otherwise without undue delay and in any event within 72 hours notify the Client if it should become aware of, any reportable Personal Data Breach or other unauthorised or unlawful Processing of Personal Data or any breach of the Data Privacy Laws;
 - 16.5.3. assist the Client in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the UK GDPR, taking into account the nature of Processing and the information available to the Processor;
 - 16.5.4. implement appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful access and against accidental loss, destruction, damage, alteration or disclosure in compliance with the obligations imposed by Article 32 of the UK GDPR;
 - 16.5.5. not otherwise modify, amend, remove or alter the contents of any Client Data comprising Personal Data or disclose or permit the disclosure of any of Client Personal Data to any third-party without the prior written authorisation of the Client;
 - 16.5.6. treat all Client Personal Data as Confidential Information for the purposes of the Agreement and ensure that persons authorised to Process the Client Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - 16.5.7. without prejudice to any other rights that the Client may have under the Agreement, upon request Company shall make available to the Client information relating to its obligations and compliance thereof with the Data Privacy Laws. The Client may request at its cost an on-site audit or inspection at the Company's premises relating to the Company's compliance with obligations under Data Privacy Laws and this Clause 16. The Client shall reimburse the Company for the costs of its staff in respect of any time expended by the Company for any such audit. Before the commencement of any on-site audit, the Parties shall mutually agree on the scope, timing, and duration of the audit in addition to the reimbursement rate for which the Client shall be responsible;
 - 16.5.8. not do or omit to do anything which causes the Client or its Affiliates to breach any Data Privacy Laws or contravene the terms of any registration, notification or authorisation under any Data Privacy Laws; and
 - 16.5.9. provide the Client with reasonable assistance in complying with any requests by Data Subjects exercising their rights under the Data Privacy Laws (each a "Data Subject Request") or communicating with the Information Commissioner's Office ("ICO") or relevant supervisory authority in relation to the Processing of Personal Data ("Supervisory Authority Correspondence").
- 16.6. Nothing in the Agreement shall be construed as preventing a Party from taking such steps as are necessary to comply with its own obligations under the applicable Data Privacy Laws and this Clause.
 - 16.7. The Company may process Personal Data on the Client's behalf for the purposes of fulfilling its obligations under the Agreement. For the avoidance of doubt, the Company only processes Client Data if the Client has purchased Hosting or SaaS. If the Client's Software is On-Premise, then the Company will not have access to Client Data without the Client's consent.
 - 16.8. The Company may utilise anonymous usage statistics and performance metrics derived from the Software and/or Services to improve and administer the Software and/or Service for the Company's internal use and other lawful purposes. Nothing herein shall be interpreted as prohibiting the Company from utilising the aggregated statistics for the purposes of operating the Company's business, provided that the Company's use of aggregated statistical data shall be at all times based on anonymised data and will not reveal the identity, whether directly or indirectly, of the Client, any User or any specific data entered by the Client or any User into the Software and/or Service.

17. Client Responsibilities

- 17.1. The Client shall specify prior to the provision of any Software and/or Services under the Agreement an appropriate authorised individual, with corresponding contact information, including electronic mail address, as the primary contact for Software and/or Services with whom the Company should communicate matters regarding Software and/or Services, such as maintenance notifications, restoration of data and other configuration changes and release of Client Data. The Company shall use this contact information to communicate those matters to the Client.
- 17.2. The Client assumes responsibility for administering security within the Company's applications (e.g., the granting of rights to a User for a specific form in the application). The Client is also responsible for maintaining its User desktops and providing its Users with network access to the Software and/or Services.
- 17.3. Where the Software is provided On-Premise, the Company will endeavour to provide technical information on database maintenance required for the Client to make an informed decision (including backups and transaction log management); however, the implementation, testing and on-going configuration of any database maintenance activities remain solely the Client's responsibility.
- 17.4. The Client shall provide accurate input information in the manner reasonably prescribed by the Company in connection with the Software and/or Services provided under the Agreement.
- 17.5. The Client shall advise the Company of any changes to Client's operations, primary contact, or other information that would require a change in the support, operation, or configuration of the hosted applications.
- 17.6. The Client shall configure necessary User accounts via the administrator account provided by the Company.
- 17.7. During the continuance of the Agreement the Client shall:
 - 17.7.1. provide, free of charge, internet access to the Company's personnel (if required), reasonable usage of machine time, communications, stationery, media, suitable working accommodation and access deemed necessary by the Company to fulfil the Agreement. For the avoidance of doubt, if Client is not able to provide the Company's personnel with internet access, then any charges incurred by the Company in order to obtain internet access shall be payable by the Client;
 - 17.7.2. provide an appropriate environment or platform to enable the Company to provide the Services or test run any Product;
 - 17.7.3. furnish the Company promptly upon receipt of a request such information as the Company may reasonably require for the provision of the Products and/or Services;
 - 17.7.4. allow the Company reasonable access to its employees for the purpose of investigation and discussion in connection with the Agreement and ensure that its employees cooperate fully with the Company in relation to the provision of the Products and/or Services;
 - 17.7.5. provide access to the Client's location as is necessary by the Company to comply with its obligations under the Agreement; and
 - 17.7.6. where applicable, ensure that equipment provided by the Company for the purpose and provision of the Agreement shall not be modified, changed, or removed without prior written permission of the Company. Where such equipment is modified, changed, or removed then the cost of restoring or replacing the equipment shall be recovered from the Client.

18. Fees and Payment

- 18.1. Price lists, catalogues and any other promotional material supplied by the Company do not constitute contractual offers capable of acceptance. Prices shown in any such materials may be subject to

change at any time prior to the entry by the Company and the Client into a binding Agreement. The Client shall pay for the Products and/or Services in accordance with the terms and conditions described under the terms of the Agreement.

- 18.2. Where any quotation is given:
- 18.2.1. all quotations are deemed to be subject to the Agreement and shall be valid for 30 days from receipt unless otherwise stated on the quotation; and
 - 18.2.2. the Company reserves the right to withdraw or amend any quotation prior to entering into an Agreement.
- 18.3. Unless otherwise stated on the Order Form and as applicable, the Client will be invoiced:
- 18.3.1. for the annual total Fees for the Product and/or the Support and Maintenance Service as shown on the Order Form at any time on or after the Commencement Date;
 - 18.3.2. monthly in arrears, for training, or otherwise where Services are provided on a time spent basis;
 - 18.3.3. for the total Fees for a Success Package and/or Project Management Package as shown on the Order Form at any time on or after the Commencement Date. Any associated Services that are not utilised during the Success Package Services Term or the Project Management Package Term cannot be carried over to any new term or refunded and will automatically expire at the end of the Success Package Services Term or the Project Management Package Term, or on termination or expiration of the Agreement; and
 - 18.3.4. in advance of the date of renewal, the annual Support and Maintenance Service Fees for maintained Products and all other annual Fees due under the Agreement.
- 18.4. The Company reserves the right, by giving notice to the Client at any time before completion of the supply of the Product and/or Services to increase the Fees payable in respect of the remainder of the Services to be provided to reflect any increase in the cost to the Company which is due, and only due to any delay caused by any instructions of the Client or failure of the Client to give the Company adequate information or instructions.
- 18.5. During the Term but not more than once in any period of 12 months, the Company may increase the annual Fees due for the supply of the Product and/or Services. Such increase as so determined shall be applied from the first anniversary of the Commencement Date and thereafter from each succeeding anniversary of the date of the last increase.
- 18.6. Unless otherwise stated on the Order Form, all Fees are exclusive of any travel and subsistence expenses which may be invoiced additionally by the Company and shall be paid by the Client.
- 18.7. Without prejudice to any other rights the Company may have in respect of any failure by the Client to pay the Fees or other monies payable pursuant to the Agreement, the Company may charge interest at the rate of 2% above the base rate of the Bank of England from time to time in force, after as well as before judgement on any amount due from the Client to the Company from the date due for payment until payment is received.
- 18.8. The Company Fees do not include any local, state, federal or foreign taxes, levies, or duties of any nature, including value added or other sales tax (including VAT), sales use or withholding taxes ("Taxes"). The Client is responsible for paying all Taxes, in addition to the Fees, and excluding only taxes based on the Company's net income. If the Company has the legal obligation to pay or collect Taxes for which the Client is responsible under this Clause, the appropriate amount shall be invoiced to and paid by the Client unless the Client provides the Company with a valid tax exemption certificate authorised by the appropriate taxing authority. For the avoidance of doubt, the Client shall only be entitled to deduct withholding tax if the Client provides the relevant supporting documents to the Company.
- 18.9. Unless otherwise stated on the Order Form, all invoices shall be payable in Pounds Sterling and within 30 days from the receipt by the Client of an invoice.

- 18.10. Neither Party is entitled to set off deduct or withhold any sums in any manner from payments due nor sums received in respect of any claim under any Agreement at any time.

19. Conduct of Business

- 19.1. The Company warrants that it shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including the Bribery Act 2010. Further the Company:
- 19.1.1. has a clear and strict policy of zero tolerance towards bribery and corrupt business practices which qualifies as adequate procedures to prevent bribery under Law (The Bribery Act 2010);
- 19.1.2. it is fully aware of the requirements of the Bribery Act 2010 and has appropriate processes and controls in place to prevent the commission of any offence under such Act by the Company or any person associated with the Company including the offering or acceptance of bribes.

20. Performance

- 20.1. The Parties agree that the times and dates referred to in any Agreement are for guidance and are estimates only and are not of the essence of the Agreement and may be varied by mutual agreement between the Parties.
- 20.2. If performance of the Agreement is suspended at the request of or delayed through default of the Client, including, but without prejudice to the generality of the foregoing, incomplete or incorrect instructions, or refusal to accept delivery of the Products and/or Services for a period of 30 days, the Company shall be entitled to payment at the applicable rates specified on the Order Form for the Services already performed, Products supplied or ordered and any other reasonable additional costs thereby incurred and the Client shall pay such sums within 30 days of receipt of a valid invoice.

21. Delivery and Acceptance

- 21.1. Unless otherwise agreed in writing, delivery shall be to the Client's physical address and/or email address as specified on the Order Form.
- 21.2. The Company shall not be liable for any shortfalls in delivery or variation from Product specification on delivery unless a claim in writing is made by the Client within 30 days of delivery.
- 21.3. In circumstances where the Company has attempted to physically deliver Products to the Client and the Client is unable or unwilling to accept such delivery, the Client will be charged for the cost of the failed delivery within the costs already quoted in addition to all subsequent attempts. If the Client is unable to accept delivery, a new date shall be set by mutual agreement of the Parties. If the Client is unwilling to accept delivery, the Parties shall seek to vary the Agreement as appropriate by mutual agreement.
- 21.4. Where the Software is provided in digital format it will be deemed accepted upon the Company sending the software activation key and download instructions to the Client.

22. Support and Maintenance Services

- 22.1. Support and Maintenance Services are provided by telephone, email and via the Company's website or any other distribution medium at the Company's discretion. Support and Maintenance Services comprises of general advice on the routine use and operation of the Software; on the use of the Software when operating a business or compliance management system. It may include ways of maximising the Client's benefit from the Software and on the implementation of the Software, where applicable; and providing Software error and incident resolution Services. Support and Maintenance Services shall also comprise of advice on technical issues encountered during the installation, implementation, configuration, deployment, and administration of the Software. No on-site

maintenance or consultancy support is provided unless separately agreed with us on terms and conditions specified by the Company. When a training database or training versions of Software has been provided to the Client this database and/or Software is unsupported.

- 22.2. Support and Maintenance Services do not include support in relation to any defects or errors resulting from unauthorised modifications made by the Client nor any malfunctions due to incorrect use of the Software or Services or as a result of any reason external to the Software or Services and the Company does not guarantee that technical support related thereto will be sufficient to remedy any defects in the Software or Services.
- 22.3. Where the Client makes use of the Company's APIs, the Company will support the installation and configuration of the APIs and provide general advice on the capabilities of the APIs. The Company does not support the development process or provide support for problems arising from the Client or third-party developments/integrations. The Company is not responsible or liable for any failure or delay in reworking the functionality of program, applications or interfaces created or developed by the Client based on previous versions of the Company's APIs and applications.
- 22.4. The operating hours of the Company's support and service desk and specific support levels are available at <https://help.ideagen.com>, which are subject to change.
- 22.5. Specific terms and conditions applicable to support are provided under Appendix A: Maintenance and Service Level Agreement.

23. Title and Risk

- 23.1. Risk of loss or damage in respect of any Hardware shall pass to the Client upon delivery or collection of the item by the Client or its agent.
- 23.2. The legal and beneficial ownership of any Hardware and/or associated material supplied as part of Hardware shall remain with the Company until payment in full in respect of all Products and associated material supplied as part of Products and/or Services has been received by the Company in accordance with the terms of the Agreement.
- 23.3. Until such payment is received in full the Company, its servants or agents may without prejudice to any of its rights recover or resell any of the Hardware and/or associated material and may enter upon the Client's premises for that purpose.

24. Return of Hardware

- 24.1. The return of Hardware shall be at the sole discretion of the Company but in any circumstance where the Company agrees to accept the return of Hardware for any reason then the Client shall:
 - 24.1.1. advise the Company within 7 days from delivery of the Hardware, the reason(s) for the return;
 - 24.1.2. obtain a returns form from the Company prior to any returns;
 - 24.1.3. complete and return to the Company the returns form within 7 days from receipt of said form;
 - 24.1.4. properly pack the Hardware in the original packaging where possible and include a detailed packing list;
 - 24.1.5. return the Hardware in the condition in which it was received within 28 days from the date of delivery of the Hardware by the Company; and
 - 24.1.6. take no action to affect any warranties that may cover the Hardware.
- 24.2. The Company shall be entitled to levy to the Client a reasonable administration charge (amounting to no more than the cost of return delivery and the staff time spent on handling the return) in respect

of return of Hardware and the Client shall pay the same to the Company within 30 days of receipt of a valid invoice.

25. Cancellation or Postponement of Scheduled Services

- 25.1. Cancellations or postponements of a scheduled Service (excluding Support and Maintenance Services) to be performed by the Company under an Order Form may be carried out with no penalty if the Client notifies the Company at least 20 business days before the start of the scheduled Service. A charge of 50% of the Fees for the scheduled Service will be due if the Client provides the Company with notice between 11 and 19 business days. A charge of 75% of the Fees for the scheduled Service will be due if the Client provides the Company with notice between 6 and 10 business days and 100% of the Fees for the scheduled Service will be due if cancelled or postponed 5 business days prior to the scheduled delivery date.

26. Notices

- 26.1. Any notice pursuant to this MSSA and each Agreement shall be in writing signed by an authorised representative of the notifying Party or by some person duly authorised by a director of the notifying Party and shall be delivered by e-mail, personally or sent by prepaid recorded delivery (airmail if overseas) to the Party due to receive such notice at the address of the Party as shown on the Order Form or to such other address as shall be notified in writing to the other Party from time to time. For the avoidance of doubt, it is a term of the Agreement that any notice of termination must be sent to cancellations@ideagen.com.
- 26.2. Any notice sent by e-mail shall be deemed to be received when sent (provided no error transmission report is received), or if outside normal business hours, at 9:00am the next business day. Any notice delivered personally shall be deemed to be received when delivered. Any notice sent by prepaid recorded delivery shall be deemed (in the absence of evidence of earlier receipt) to be received 2 business days after posting and 5 business days if sent by airmail. In proving the time of dispatch, it shall be sufficient to show that the envelope containing such notice was properly posted.

27. Governing Law and jurisdiction

- 27.1. This MSSA and each Agreement shall be interpreted in accordance with English Law. The Parties hereby submit to the exclusive jurisdiction of the Courts of England and Wales in relation to any dispute and/or claim under or in relation to this MSSA and each Agreement or the subject matter hereof.

28. Remedy and Entire Agreement

- 28.1. Except as otherwise stated herein, remedies shall be cumulative and there shall be no obligation to exercise a particular remedy.
- 28.2. This MSSA and each Agreement shall constitute the entire understanding between the Parties with respect to the subject matter of each, and supersede all prior oral and written understandings, and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to their subject matter. Each Party acknowledges and accepts that, in entering into this MSSA and each Agreement, it has not relied upon any representation, undertaking or promise except as set out in this MSSA or where applicable the Agreement.

29. Insurance

- 29.1. The Company shall take out and maintain during the Term of the Agreement the following types of insurance policies with a reputable insurance company:

- 29.1.1. professional indemnity insurance;
- 29.1.2. public liability insurance including cover for bodily injury and property damage arising in connection with the Agreement;
- 29.1.3. employer's liability insurance as required by laws; and
- 29.1.4. cyber liability insurance.

30. Waiver

- 30.1. The rights and remedies of either Party under this MSSA and each Agreement shall not be diminished, waived, or extinguished by the granting of any indulgence, forbearance, or extension of time by the other Party nor any failure or delay by the other Party in asserting or exercising any such rights or remedies.

31. Severance

- 31.1. If at any time any one or more Clause, paragraph, subparagraph, or any other part of this MSSA or any Agreement is held to be, or becomes, void or otherwise unenforceable for any reason under any applicable law the same shall be deemed omitted and the validity and/or enforceability of the remaining Clauses, provisions, paragraphs, or sections of this MSSA or any Agreement shall not in any way be affected or impaired thereby.

32. Variation

- 32.1. No variation to this MSSA or any Agreement shall be valid unless it is in writing and signed for and on behalf of each of the Parties by an authorised signatory.

33. Force Majeure

- 33.1. In the event that either Party is prevented from fulfilling its obligations under the Agreement by reason of any supervening event beyond its control including but not limited to war, national emergency, flood, earthquake, strike, or lockout the Party shall not be deemed to be in breach of its obligations under the Agreement. The Party shall immediately give notice of this to the other Party and must take all reasonable steps to resume performance of its obligations. The Client shall not be entitled rely on the terms of this Clause in respect of obligations to make payment under the terms of the Agreement.
- 33.2. The Company shall have no liability or responsibility in the event of loss or interruption in Hosting Services to the extent due to causes beyond its reasonable control or foreseeability, such as loss, interruption or failure of telecommunications or digital transmissions and links, internet slowdown or failures.
- 33.3. If the period of such incapacity exceeds 180 days, then the Agreement may be terminated on 30 days notice by the Party not seeking relief under this Clause 33 unless the Parties first agree otherwise in writing.

34. Non-Solicitation

- 34.1. Neither party shall (except with the prior written consent of the other party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other party any person employed or engaged by such other party in the provision of the Products and/or Services or (in the case of the Client) in the receipt of the Products and/or Services at any time during the Term or for a further period of 6 months after the termination of each Agreement other than by means of a

national advertising campaign open to all comers and not specifically targeted at any of the staff of the other Party.

35. Health and Safety

- 35.1. Where applicable, the Client shall take all reasonable precautions to ensure the health and safety of the Company's employees or agents while on the Client's premises.

36. Independent Contractor Status

- 36.1. The Company performs each Agreement as an independent contractor, not as an employee of the Client. Nothing in this MSSA or any Agreement is intended to construe the existence of a partnership, joint venture, or agency relationship between the Client and the Company.

37. Assignment

- 37.1. This MSSA and each Agreement shall not be assigned by Client without the prior written consent of the Company.
- 37.2. The Company may assign its rights and delegate its obligations under this MSSA or any Agreement to any Affiliate or in connection with a solvent merger, acquisition, spin-out or other transfer of all or substantially all of the business, stock or assets to which this MSSA or the Agreement relates. Subject to foregoing, this MSSA and each Agreement is binding upon, inures to the benefit of, and is enforceable by the Parties hereto and their respective successors and assigns.
- 37.3. The Company may delegate any of its obligations or responsibilities arising out of this MSSA or any Agreement to any of its subcontractors. Performance by such subcontractors shall be deemed to be performance by the Company.

38. Dispute resolution

- 38.1. Any dispute arising under this MSSA, or any Agreement should first be escalated to the current contract managers of each Party. If the dispute remains unresolved for at least 14 days, it shall be referred to the senior management of each Party who shall attempt resolution through negotiations. If the dispute remains unresolved for a further 14 days, either Party may refer the dispute to the courts. Nothing hereunder shall prevent or restrict a Party seeking interim or injunctive relief, or otherwise exercising its right to terminate this MSSA or any Agreement.

39. Agent

- 39.1. For the purposes of this MSSA and any Agreement, neither Party is an agent of the other Party and neither Party has any express or implied authority to act on behalf of the other Party. The Parties are independent contractors and neither Party shall have the power or authority to bind the other Party to any contract or obligation other than as set forth in this MSSA or any Agreement.

40. Third-Party Rights

- 40.1. No part of this MSSA or any Agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this MSSA or any Agreement.
- 40.2. Subject to this Clause 40, each Agreement shall continue and be binding on the transferee, successors and assignees of either Party as required.

Appendix A: Maintenance and Service Level Agreement

This Maintenance and Service Level Agreement ("SLA") sets out the terms upon which support and maintenance services are provided.

Definitions

"Applicable Monthly Service Fees"	means the total annual fees actually paid by the Client for a Service, which are pro-rated on a monthly basis and applied to the month for which a Service Credit is owed in accordance with this SLA;
"Downtime"	means a period during which the aspects of a Service specified are unavailable, excluding (i) Scheduled Downtime; and (ii) unavailability of a Service due to limitations described in Clause 6 of this SLA. Downtime is measured in the units set forth in Clause 6. Any period of time when Users are unable to use web applications to submit, view and edit any data record for which they have appropriate permissions;
"Incident"	means (i) any single event, or (ii) any set of events, that result in Downtime;
"Maintained Software"	means the software product in respect of which an order is accepted by the Company, for ongoing Support and Maintenance Services;
"Scheduled Downtime"	means periods of Downtime related to network, hardware, or Service maintenance or upgrades. The Company will publish notice or notify the Client at least 5 business days prior to the commencement of such Downtime;
"Service Credit"	means the percentage of the Applicable Monthly Service Fees credited to the Client following claim approval;
"Service Minutes"	means the total number of minutes in a month, excluding Scheduled Downtime; and
"Support and Maintenance Services"	means the support and maintenance services specified on the relevant Order Form.

1. Term of SLA

- 1.1. This SLA will come into force on the Commencement Date specified on the Order Form and shall continue in force for the Initial Period or applicable Renewal Period.

2. Client's Obligations

- 2.1. The Client shall provide the Company with such information as the Company may, from time to time, reasonably require.
- 2.2. The Client shall:
 - 2.2.1. where applicable install such corrected versions, updates and new releases of the Maintained Software as are supplied by the Company;

- 2.2.2. ensure that the Maintained Software is used in accordance with its instructions for use;
 - 2.2.3. where applicable keep full security copies of the Maintained Software and of the Client's databases and computer records in accordance with best computing practice;
 - 2.2.4. not alter or modify the Maintained Software in any way whatsoever nor permit the Maintained Software to be combined with any other programs unless authorised to do so by the Company;
 - 2.2.5. co-operate fully with Company's personnel or partners' personnel in the diagnosis of any Software fault or defect in the accompanying documentation and/or resolution of any Incident;
 - 2.2.6. maintain a minimum of one member of the Client's staff who has been sufficiently trained, and shall provide a primary point of contact to the Company in connection with the provision of the Support and Maintenance Services;
 - 2.2.8. where applicable and required provide access to any installed Product through remote control software, such as team viewer or other proprietary or third-party applications used by the Company for the purpose of providing remote support and identifying and resolving incidents; and
 - 2.2.9. ensure in the interests of health and safety that the Company's personnel, while on Client's premises, are at all times accompanied by a member of the Client's staff familiar with the Client's premises and safety procedures.
- 2.3. The Client shall perform its obligations in a reasonable and timely manner in accordance with the Clauses of the Agreement.

3. Company's Obligations

- 3.1. The Company shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Support and Maintenance Services.
- 3.2. The Company shall use all due and proper care to ensure that the manner in which it provides the Support and Maintenance Services does not have any adverse effect on the name, reputation, image or business of the Client.

4. Support Services

- 4.1. The support hours of operation and current escalation procedure are available at <https://help.ideagen.com>, which are subject to change.

5. Maintenance Services

- 5.1. The Client will receive, from time-to-time, notifications about Software upgrades of new versions, service packs, and patches along with instructions for applying the updates.
- 5.2. Upgrades and/or updates to the Products are made available during the period of maintenance cover. For the avoidance of doubt, there may be charges associated with upgrades should the Client require the Company's assistance with the installation of such upgrade.
- 5.3. Where applicable, the Company shall endeavour to provide validated Clients with 1 month notice of any upgrades and/or updates to the Software.

- 5.4. For the avoidance of doubt, the Company will only support the current version and two previous versions of the Software.

6. Software as a Service (SaaS)

6.1. Service Credits:

- 6.1.1. Service Credits are made available where the Company falls below specified availability standards;
- 6.1.2. the "Monthly Uptime Percentage" for SaaS is calculated by the following formula: $(\text{Service Minutes} - \text{Downtime}) / (\text{Service Minutes}) \times 100$ where Downtime is measured in minutes; that is, for each month, Downtime is the sum of the length (in minutes) of each Incident that occurs during that month; and
- 6.1.3. if the Monthly Uptime Percentage falls below 99.7% for any given month, the Client may be eligible for the following Service Credit:

Monthly Uptime Percentage	Service Credit
< 99.7%	10%
< 99.5%	20%

6.2. Service Credit claim:

- 6.2.1. if the Company fails to meet the minimum Monthly Uptime Percentage described above for SaaS, the Client may submit a claim for a Service Credit;
- 6.2.2. the Client must submit a claim to customer support at the Company that includes: (i) a detailed description of the Incident; (ii) information regarding the duration of the Downtime; (iii) the number and location(s) of affected Users (where applicable); and (iv) descriptions of the Client's attempts to resolve the Incident at the time of occurrence;
- 6.2.3. the Company must receive the claim and all required information by the end of the calendar month following the month in which the Incident occurred; and
- 6.2.4. the Company will evaluate all information reasonably available and make a good faith judgment on whether a Service Credit is owed. The Company will use commercially reasonable efforts to process claims during the subsequent month and within 45 days of receipt. The Client must be in compliance with the Agreement in order to be eligible for a Service Credit. If the Company determines that a Service Credit is owed to the Client, the Company will apply the Service Credit to the Client's Applicable Monthly Service Fees.

6.3. Limitations:

- 6.3.1. This SLA does not apply to any performance or availability issues:
 - 6.3.1.1. due to factors outside the Company's control (including but not limited to, natural disaster, war, acts of terrorism, riots, government action, or cyber-attack);
 - 6.3.1.2. due to planned maintenance or upgrades for which the Company have provided 5 business days prior notice;
 - 6.3.1.3. that result from the Client or third-party services, hardware, or software, including but not limited to, issues resulting from inadequate bandwidth;

- 6.3.1.4. caused by the Client's use of a Service after the Company advised the Client to modify its use of a Service, if the Client did not modify its use as advised;
 - 6.3.1.5. during pre-release, beta and trial Services (as determined by the Company);
 - 6.3.1.6. that result from the Client's unauthorised action or lack of action when required, or from the Client's employees, agents, contractors, or vendors, or anyone gaining access to the Company's network by means of the Client's passwords or equipment; or
 - 6.3.1.7. that result from the Client's failure to adhere to any required configurations, use supported platforms, and follow any policies for acceptable use.
 - 6.3.2. Service Credits are the Client's sole and exclusive remedy for availability issues for any Service under this SLA. The Client may not offset the Client's Applicable Monthly Service Fees for any performance or availability issues.
 - 6.4. Service Credits will not apply to any On-Premise Software that is provided as or part of any Service.
 - 6.5. If the Client purchased more than one SaaS solution (not as a suite), then the Client must submit claims pursuant to the process described above in Clause 6.2 as if each SaaS solution were covered by an individual SLA.
 - 6.6. If the Client purchased SaaS solutions as part of a suite or other single offer, the Applicable Monthly Service Fees and Service Credit for each SaaS solution will be pro-rated.